



PROFESSIONAL
CERTIFICATION
COALITION

April 17, 2019

Senator Warren Daniel
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Senator Andy Wells
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Re: North Carolina S. 305

Dear Senator Warren and Senator Wells:

The Professional Certification Coalition (PCC) writes to express concerns about the potential effects of S. 305 on private certification organizations. In its current form, S. 305 appears to apply to private certification organizations operating in North Carolina. If that is the intent of the bill, the PCC is concerned that the legislation would inappropriately interfere with the right of private credentialing organizations to adopt and enforce ethics codes. In addition, the PCC is concerned that the bill, in its present form, could be interpreted as restricting or invalidating licensure regulations that condition licensure on current private certification. Given that private certifications provide important assurances to the public that certified professionals have relevant qualifications and meet established standards, we request that you modify the bill to avoid these negative impacts.

The PCC is a nonprofit association founded last year to address legislative initiatives that affect professional certification programs and those who hold private certification credentials. The PCC currently has well over 100 members, including non-governmental professional certification organizations, professional societies and service providers. The PCC's members reflect a full spectrum of professions, including health care professionals, professional and civil engineers, human resources managers, financial professionals, and information technology professionals, among many others. The PCC advances the best interests of those who use or rely on professional certification—such as employers, reimbursers, and the general public—as well as of individual professionals themselves who achieve professional certification status, including many residents of North Carolina. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – serve as the Steering Committee for the PCC.

The PCC has two principal concerns about the bill:

1. *Interference with Private Certification Organizations' Eligibility and Disciplinary Decisions*

The PCC supports S. 305's worthy objective of reducing recidivism by expanding opportunities for ex-offenders to earn a living. We believe, however, that the government should refrain from interfering with the right of private certification organizations to determine what profession-specific certification requirements, both substantive and conduct-related, are necessary to qualify for the organization's credentials. Unfortunately, in its current form, S. 305 appears to apply to and restrict the independent decisions of private certification organizations operating in North Carolina.

The bill prohibits any "occupational licensing board" from denying a "license" to any individual based on a conviction for "a crime of moral turpitude" and also mandates specific procedures and restrictions with respect to applications by individuals with criminal convictions. The bill defines a "license" to include any "evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession." The bill also defines an "occupational licensing board" to include any "board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses." By distinguishing "occupational licensing boards" from "state agency licensing boards," the bill could be interpreted to apply to private certification organizations operating in North Carolina. Moreover, in some fields, such as health care, safety-related roles, and the engineering and financial industries, regulatory agencies have incorporated the competency and ethical conduct standards established by non-governmental professional certification programs into state licensure requirements. Because those certifications are required to perform those occupations in North Carolina, many non-governmental certifications would be included in the current definition of a "license," and many private certification organizations would meet the current definition on an "occupational licensing board."

To avoid such interference, we request that the legislature amend S. 305 to clarify that the requirements apply only to governmental entities. One small wording change would accomplish this:

- Amend the definition of "license" in § 93B-1 to "Any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain **from the state** before he may engage in or

represent himself to be a member of a particular profession.”

2. Undercutting licensure laws that build on private certifications.

The ethics codes of some private certification programs call for revocation or denial of certification due to criminal convictions involving moral turpitude that are relevant to the practice of a specific occupation. For example, convictions for abusing prescription privileges to distribute opioids typically lead to loss of certification for healthcare professionals, and convictions for embezzlement or fraud typically lead to loss of certification for financial professionals. This is relevant to S. 305 because, as noted above, licensure laws for healthcare and financial professionals require current private certification, as do licensure laws for safety-related roles, civil and professional engineers, and other professions in which significant expertise is needed to practice competently. These regulatory requirements serve to acknowledge both the importance of setting knowledge and conduct standards for the protection of the public and the value of having those standards defined by subject matter experts rather than by government officials. For these professions, the *content* of the standards is best established by the non-governmental professional certification program, but *enforcement* of the standards is more effectively done by the licensing agency. The current language of S. 305, however, bars disqualification from licensure based on certain criminal convictions – “notwithstanding any other provisions of law.”

The PCC believes it is important to clarify that S. 305 is not intended to interfere with the ethics code enforcement of private certification organizations, nor is it intended remove certification requirements from practice acts. We therefore request the addition of a new § 93B-8.1(d):

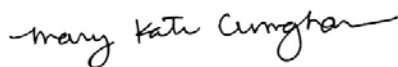
“Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual, nor shall it impair the right of private certification organizations to establish and enforce eligibility criteria, ethics codes, or disciplinary policies. In addition, nothing in this chapter shall be construed to alter any requirement in a licensure statute or regulation for an individual to hold current private certification as a condition of licensure or renewal of licensure.”

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Thank you for your consideration of these amendments. If you have any questions regarding this letter, please feel free to reach out to us using the contact information identified below.

Sincerely,



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